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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DELARAM FAKHRAI AND MEHRAN MOSHFEGHI

Appeal 2016-004038
Application 13/346,702
Technology Center 3600

Before CARLA M. KRIVAK, CARL W. WHITEHEAD JR. and
KARA L. SZPONDOWSKI, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants are appealing the Final Rejection of claims 1–12 and 21–32 under 35 U.S.C. § 134(a). Appeal Brief 1. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

Introduction

“Discount processing auction methods and systems are provided where buyers pool their purchasing power in order to get more competitive offers from sellers.” Abstract.

Illustrative Claim

1. A method of performing an auction where a set of sellers indirectly bid on items in purchase lists of a plurality of buyers based on a set of group discount rules, each purchase list comprising a set of items a buyer intends to purchase in the auction, the method comprising:

receiving a purchase list comprising a set of items from a first buyer in the plurality of buyers;

receiving a set of group discount rules for the auction from the set of sellers, the set of group discount rules comprising discount rules offering discounts for purchasing a combination of items from a plurality of sellers in the set of sellers;

by a computer, analyzing the purchase lists of a set of buyers in the plurality of buyers to identify items related to the items in the set of items in the purchase list of the first buyer;

by the computer, analyzing the set of group discount rules received for the auction from the set of sellers;

by the computer, suggesting a replacement first item to an existing second item in the purchase list of a second buyer in the plurality of buyers based on (i) the analysis of the purchase lists of the set of buyers and (ii) the analysis of the set of group discount rules, the replacement first item generating a higher discount in the auction than a discount associated with the existing second item;

receiving a request to replace the existing second item with the replacement first item in the purchase list of the second buyer; and

in response to receiving the request, performing the auction by receiving a change in group discount rules from a particular seller for a set

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of items sold by the particular seller in the auction based on the received request from the second buyer.

Rejection on Appeal

Claims 1–12 and 21–32 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Final Rejection 5.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed September 24, 2015), the Reply Brief (February 29, 2016), the Answer (mailed December 30, 2015) and the Final Rejection (mailed April 2, 2015) for the respective details.

35 U.S.C. §101 Rejection

Appellants argue the “**Claims Add Specific Limitations other than what is Well-Understood, Routine, and Conventional in the Field and Add Unconventional Steps that Confine the Claims to a Particular Useful Application.**” Appeal Brief 8. Appellants contend, “A patent eligibility test requires a two step analysis¹ as provided by USPTO in ‘2014 Interim Guidance on Patent Subject Matter Eligibility,’ Federal Register, Vol. 79, No. 241, PP. 74618-74633, December 16, 2014 (‘Interim

¹ “In accordance with the existing two-step analysis for patent subject matter eligibility under 35 U.S.C. 101 explained in MPEP 2106, the claimed invention (Step 1) ‘must be directed to one of the four statutory categories’ and (Step 2) ‘must not be wholly directed to subject matter encompassing a judicially recognized exception.’”

Guidance’). *See* the flowchart on page 74621 of the Interim Guidance.”

App. Br. 8. We agree with Appellants that a two-step analysis is required to determine patent eligibility. *See Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347, 2355-56 (2014).

First, we agree with the Examiner’s conclusion that the claims are directed to a judicially recognized exception because the claims recite an abstract idea:

The claims are drawn to the application of principles outside of the scientific realm - such as principles related to commercial or social interaction. In this case, the claims are clearly rooted in the idea of pooling purchasing powers (organized human activity) and performing an auction (a fundamental economic practice). These steps merely represent the performance of business related steps, and do not amount to more than automating the commercial interaction on a general purpose computer.

Final Rejection 2–3. Appellants’ argument that “the Office Action has not been able to cite any reference or articles that the recited claimed steps amounts to a longstanding commercial practice that has ever been performed in an auction” (Appeal Brief 12) is unpersuasive.

Appellants further argue, “even if the claims are assumed *arguendo* as being directed to a judicial exception, the claims are still patent eligible under Step 2B of Interim Guidance for at least the following reasons.” App.

Br. 9. Appellants contend:

The claimed invention provides a novel way of analyzing the purchase lists of a set of buyers, analyzing group discount rules of a set of sellers, suggesting a replacement item to an existing item in the purchase list of a buyer, receiving a request to replace the existing item with the replacement item, and performing the auction by receiving a change in group discount

rules from a particular seller based on a received replacement request.

Appeal Brief 9.

Appellants provide “examples of the advantages provided by the claimed invention that are not understood, routine, or conventional in the field” to support their position:

- “Instead of sellers directly bidding for the buyer’s shopping lists (as is the case in a traditional reverse auction) the sellers using the claimed invention update their discount rules based on the purchase lists of the buyers.”
- “Another exemplary advantage of the claimed invention is that the buyers can change the items in their purchase lists while the auction is active to increase their purchasing power.”
- “Yet another exemplary advantage of the claimed invention is that a computer provides the item replacement suggestions by analyzing the purchase list of many buyers and the group discount rules of many sellers.”

Appeal Brief 9–10.

Appellants advantages examples “do not transform the abstract idea that they recite into patent-eligible subject matter because the claims simply instruct the practitioner to implement the abstract idea with routine, conventional activity” in spite of Appellants’ contentions that the provided advantages are unconventional. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (2014). Further, the claims here are not tied to any particular novel machine or apparatus, only to a general purpose computer. *See id.* at 716; e.g., Spec. 35, ll. 20–23 (“electronic system 1100 may be a computer (e.g., a desktop computer, personal computer, tablet computer, server, etc.),

phone PDA, or any other sort of electronic or computing device.”); Spec. Fig. 11. We, therefore, agree with the Examiner’s findings and conclusion that the claims do not recite additional elements that amount to significantly more than the judicial exception. Answer 2–3; Final Rejection 3–4.

Appellants’ preemption argument (Appeal Brief 10–11) is likewise unpersuasive of Examiner error. We find that this argument is adequately addressed by the *Alice* analysis above. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the Mayo framework, as they are in this case, preemption concerns are fully addressed and made moot.”); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

For the same reasons, we are not persuaded by Appellants’ arguments as to dependent claims 10 and 30. Appeal Brief 13. Accordingly, we sustain the Examiner non-statutory subject matter rejection of claims 1–12 and 21–32.

DECISION

The Examiner’s non-statutory subject matter rejection of claims 1–12 and 21–32 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED